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SUBJECT: SOMALIA: INSTRUCTIONS ON TABLING OUR UNSC  
RESOLUTION ON SOMALIA PIRACY

1. This is an action cable. USUN is instructed to deliver the following draft resolution (complete text paragraph 4) to the British and the French Mission in New York immediately. USUN should table the resolution to the Council NLT COB on November 20.

2. Objectives:

-- Thank the British and the French for their many helpful suggestions on the Somali piracy resolution. We incorporated a large percentage of their suggestions into the draft text.

-- Inform our P3 partners that we are willing to delete OP15bis (which we recently amended following the Secretary-General's report and included in its entirety in paragraph 5), but strongly urge the British to include this paragraph or something very similar (i.e. calling for a conop for UN Peacekeeping Mission independent of an MNF and with a limited mandate like the one stated in OP15bis) in their resolution on Somalia very shortly after adoption of the piracy resolution.

-- Emphasize that we are willing to make this concession as a gesture of good will to our P3 partners because we understand how important passage of a piracy resolution is to all of us at this time. However, our partners need to understand how very important planning for a UN Peacekeeping Mission is to the United States. Over the years the UN has been caught flat-footed in peacekeeping planning when a given situation necessitated UN intervention. We do not want to see the same mistake happen in Somalia.

-- Inform P-3 that we intend to table the resolution in paragraph 4 to the rest of the Council today.

3. USUN should report back any readout obtained from our P3 partners.

4. The following is the complete text of a Somalia piracy resolution:

The Security Council,

(1) Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814, 1816 and 1838,

(2) Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to fishing activities in conformity with international laws,

(3) Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

(4) Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

(5) Taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government ("TFG") to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia's territorial sea,

(6) Taking note of the many public requests from the TFG for international assistance to counter piracy off its coasts, including the letter from the Permanent Representative of the Somali Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG to the Security Council for urgent assistance in securing the territorial sea and international waters off the coast of Somalia, and the 1 September 2008 letter from the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, ADD REFERENCE TO ADDITIONAL, YET-TO-BE-RECEIVED TFG LETTER REQUESTING EXTENSION OF RESOLUTION 1816.

(7) Further taking note of the letters from the TFG and from other Member States to the Security Council to inform the Council of their actions, as requested in paragraphs 7 and 12 of 1816,

(8) Expressing again its determination to ensure the long-term security of World Food Programme (WFP) maritime deliveries to Somalia,

(9) Recalling that in its resolution 1838 (2008) it commended the contribution made by some States since November 2007 to protect (WFP) maritime convoys, and the establishment by the European Union of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, as well as other international and national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008),

(10) Noting that a peaceful and stable situation within Somalia will be an important factor in addressing the scourge of piracy and armed robbery at sea off the coast of Somalia, and that peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery off the coast of Somalia,

(11) Further noting the key role played by the African Union Mission to Somalia (AMISOM) in facilitating delivery of humanitarian assistance to Somalia through the port of Mogadishu, commending the contribution that AMISOM has made toward the goal of establishing a lasting peace and stability in Somalia, and recognizing specifically the important contributions of the Governments of Uganda and Burundi to Somalia,

(12) Welcoming the signing of a peace and reconciliation Agreement ("the Djibouti Agreement") between the TFG and the Alliance of the Re-Liberation of Somalia on August 19, 2008, as well as their signing of a joint ceasefire agreement on October 26, 2008, and noting that the Djibouti Agreement calls for the United Nations to authorize and deploy an international stabilization force,

(13) Determining that the incidents of piracy and armed robbery at sea against vessels in the territorial sea of Somalia and the high seas off the coast of Somalia exacerbate

the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

(14) Acting under Chapter VII of the Charter of the United Nations,

¶1. Reiterates that it condemns and deplores all acts of piracy and armed robbery at sea;

¶2. Expresses its concern/Regrets that the payment of ransoms to pirates encourages further acts of piracy;

¶3. Welcomes the efforts of the International Maritime Organization ("IMO") to update its guidance and recommendations to the shipping industry and to governments for preventing and suppressing piracy and armed robbery at sea and to provide this guidance as soon as practicable to all Member States and to the international shipping community;

¶4. Calls upon the industry and insurance companies to continue to cooperate with the IMO and ensure that their vessels receive appropriate guidance and training on avoidance, evasion, and defensive measures and techniques to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;

¶5. Further calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;

¶6. Welcomes the decision by NATO to counter piracy off the Somalia coast, including by escorting vessels of the WFP, strongly welcomes the decision by the EU on 10 November 2008 to launch, for a period of 12 months, a naval operation to protect WFP maritime convoys bringing humanitarian assistance to Somalia and other vulnerable ships, and to repress acts of piracy and armed robbery at sea off the coast of Somalia pursuant to resolution 1816 (2008) and 1838 (2008), and welcomes also other initiatives by States, regional or international organizations to this end;

¶7. Requests the Secretary-General to present to it a report, no later than 3 months after the adoption of this resolution, on ways to ensure the long-term security of WFP maritime deliveries to Somalia, including a possible role for the United Nations in this regard, as well as on the additional assistance he could provide to rally Member States and regional organizations to improve their coordination in this effort,

¶8. Calls upon States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular by deploying naval vessels and military aircraft, and consistent with this resolution, by seizing and disposing of boats, vessels, arms and other related equipment used in, or that are suspected will be used in, the commission of piracy and armed robbery off the coast of Somalia;

¶9. Further calls upon States and regional organizations to coordinate their efforts to deter acts of piracy and armed robbery at sea in cooperation with each other, the IMO, the international shipping community, flag States, and the TFG;

¶10. Decides that for a period of 12 months from the date of this resolution States and Regional Organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General, may:

(a) Enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

(b) Use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea;

¶11. Affirms that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been provided only following the receipt of the LETTER FROM THE TFG THAT HASN'T BEEN RECEIVED YET.

¶12. Calls upon all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;

¶13. Notes that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offenses, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; urges all States that have not already done so to become parties to the SUA Convention, further urges States parties to the SUA Convention to fully implement their obligations under said convention, and calls upon the Secretary-General, in cooperation with the IMO, to work with States parties to the SUA Convention and other Member States to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea;

¶14. Requests States cooperating with the TFG to inform the Security Council within 9 months of the progress of actions undertaken in the exercise of the authority provided in paragraph 10 above;

¶15. Requests the Secretary-General to report to the Security Council within 11 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;

¶16. Requests the Secretary-General of the IMO to brief the Council on the basis of cases brought to his attention by the agreement of all affected coastal states, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

¶17. Expresses its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraphs 9 and 10 above for additional periods upon the request of the TFG;

¶18. Decides to remain seized of the matter.

end text

¶15. The following is the amended OP15bis text:

15 bis. Acknowledges that the scourge of piracy in Somalia will never be fully contained until the problems in the sovereign territory of Somalia are addressed; Noting with regret the lack of adequate planning for a UN Peacekeeping Operation in the 17 November report on Somalia from the Secretary-General; Requests the Secretariat to provide for Council consideration a concept of operations for a UN peacekeeping operation no later than 15 days from the adoption of this resolution. The concept of operations should include a geographic focus on southern and central Somalia and must not be dependent the deployment of a preceding Multinational Force/International Stabilization Force, with key Mission activities focused on: 1) supporting implementation of the Djibouti Peace Agreement, including monitoring and verification of any ceasefire and joint security arrangements and liaison with the Joint Security Committee (JSC); 2) providing protection for the Transitional Federal Institutions to help them carry out the functions of government and security for key infrastructure; to facilitate, within capabilities and in its areas of deployment, humanitarian assistance to affected populations by helping to create the necessary security conditions; and 3) protection of UN personnel, facilities, installations, equipment and mission, and ensuring the security and freedom of movement of UN personnel;

end text

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